IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

Bail Appl..No. 6826 of 2007()

CRIME NO.695/07 OF MANNARKKAD POLICE STATION

PETITIONER/1ST ACCUSED

SURESH KUMAR @ LAKSHMANAN,
AGED 29, S/O RAMAN KUTTY,
CHAKKALAM KUNNATH (H),
MUNDAKUNNI, MANNARKKAD.

BY ADV. SRI.RAJESH NAMBIAR

RESPONDENTS: STATE

THE STATE OF KERALA, REPRESENTED BY
THE SHO MANNARKKAD POLICE STATION,
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6826 OF 2007

Dated this the 14th day of November, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused. The other accused (A2 and A3) have already been deleted from the array of accused, submits the learned Public Prosecutor. The crux of the allegations against the petitioner is that he had sexual intercourse with the victim – the daughter of the de facto complainant who was aged only about 13 years. Her date of birth is 23/4/1991. The petitioner was allegedly in love with the said girl. The first intercourse took place on 1/1/04. Thereafter, he promised to marry her. He had indulged in sexual intercourse with her on a number of occasions. During that period, she was below the age of consent – 16 years. On 30/7/07, the petitioner is alleged to have kidnapped the said minor girl aged below 18 years. The petitioner now faces allegations under Secs.376 and 366A of

the IPC. The crime was registered on the basis of a private complaint filed by the mother of the victim which was referred to the police under Sec.156(3) of the Cr.P.C. The complaint was filed only on 11/10/07. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations are totally false. With regard to the incident which had allegedly taken place on 1/1/04 and thereafter, the complaint is seen filed only in October, 2007. One can read between the lines and come to the unmistakable conclusion that false allegations are being raised presently as the parents of the petitioner had not consented to the relationship between the alleged victim and the petitioner. In these circumstances, it is prayed that anticipatory bail may be granted to the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the allegations raised are inherently inspiring and there is no reason whatsoever to view those allegations with any amount of reservation or suspicion. In the peculiar nature of the facts and circumstances of this case, the learned Public Prosecutor was requested to place the Case Diary for my perusal. I have perused the same. At this early stage of the investigation, I

shall carefully avoid any detailed discussions on merits about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that I find the opposition by the learned Public Prosecutor to be justified. I am unable to perceive any features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. This, I am convinced, is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

4. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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//true copy// P.S. to Judge